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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/830,488	04/26/2001	Vincent Pluinage	RXSD1001-3	8079
22470 7590 01/04/2007 HAYNES BEFFEL & WOLFELD LLP P O BOX 366 HALF MOON BAY, CA 94019			EXAMINER BATES, KEVIN T	
			ART UNIT 2155	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE			MAIL DATE	DELIVERY MODE
3 MONTHS			01/04/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 09/830,488	Applicant(s) PLUVINAGE ET AL.	
	Examiner Kevin Bates	Art Unit 2155	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 146, 148, 174-179 and 189-196 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 146, 148, 174-179, and 189-196 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>11-16-06, 12-19-06</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office Action is in response to a communication made on October 25, 2006.

The Information Disclosure Statements received November 16 and December 19, 2006 have been considered.

Claims 1-145, 147, 149-173, 180-188 have been cancelled.

Claims 189-196 have been newly added

Claims 146, 148, 174-179, and 189-196 are pending in this application.

Claim 146, 148, 174-178, and 189-196 are rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell (6,212,496) in view of Adams (6594366).

Regarding claim 146, Campbell teaches a device for producing customized audio data (Column 2, lines 24 – 26), comprising:

a data processor (Figure 1, element 115); a data storage medium (Figure 1, element 120), coupled to the data processor, storing a hearing profile of a customer (Column 4, lines 6 – 15);

an audio transducer (Figure 1, element 110), coupled to the data processor; a communication port coupled to the processor (Figure 1, element 105);

logic to produce customized audio data, by processing audio data received on the communication port from an external source using the hearing profile (Column 3, lines 14 – 16); and

a computer program stored on the data storage medium executable by the data processor to communicate with an external data processing device providing a user

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interface supporting an interactive process to provide the hearing profile (Column 5, line 60 – Column 6, line 19).

Campbell does not explicitly indicate that its audio processor includes a headset.

Adams teaches a cellphone with the ability to use the audio transducer in a headset (Column 2, lines 20 – 25; lines 32 – 36).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Adam's teaching of a headset connected to a cellphone with Campbell's cellular device in order to enable the use of earphones to hear the audio being produced.

Regarding claim 174, Campbell teaches a method for producing a hearing profile, comprising:

- an audio transducer (Column 2, lines 54 – 56);
- an external data processor having a user interface (Column 2, lines 46 – 49);
- executing an interactive process using the user interface and the audio transducer to develop a hearing profile (Column 5, line 60 – Column 6, line 19);
- producing a customized audio data product using the hearing profile (Column 3, lines 14 – 16); and
- playing the customized audio data product on the headset (Column 2, lines 54 – 56).

Campbell does not explicitly indicate that its audio processor includes a headset.

Adams teaches a cellphone with the ability to use the audio transducer in a headset (Column 2, lines 20 – 25; lines 32 – 36).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Adam's teaching of a headset connected to a cellphone with Campbell's cellular device in order to enable the use of earphones to hear the audio being produced.

Regarding claim 148, Campbell teaches the audio data playback device of claim 146.

Campbell does not explicitly indicate that the audio transducer comprises stereo speakers.

Adams teaches a mobile device (Column 2, lines 22 – 25) including a headset with a speaker for each ear (Figure 1, element 101 and 103).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Adam's teaching of a headset connected to a cellphone with Campbell's cellular device in order to enable the use of earphones to hear the audio being produced.

Regarding claim 176, Campbell teaches the device of claim 174, including: an interface by which the customized audio data product is received from a remote site (Column 6, lines 39 – 43).

Regarding claim 178, Campbell teaches the device of claim 174, including: logic to store the customized audio data product on a machine readable medium (Column 3, lines 52 – 59).

Regarding claim 177, Campbell teaches the device of claim 174, wherein the customized audio data product comprises at least a portion of the hearing profile, and

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the audio data product for transformation according to the hearing profile at a remote site (Column 6, lines 39 – 43).

Regarding claim 175, Campbell teaches the device of claim 174, wherein the customized audio data product comprises a transformation according to the hearing profile of the audio data product (Column 3, lines 14 – 16).

Regarding claims 189 and 193, Campbell teaches the playback device of claims 146 and 174, wherein the hearing profile is provided by an interface allowing selection by the user according to personal preferences (Column 5, line 60 – Column 6, line 19)

Regarding claims 190 and 194, Campbell teaches the playback device of claims 146 and 174, wherein the hearing profile is provided using the interface according to a hearing test (Column 5, line 60 – Column 6, line 19).

Regarding claims 191 and 195, Campbell teaches the playback device of claims 146 and 174, including a computer program stored on the data storage medium executable by the processor to communicate with an external data processing device providing a user interface supporting an interactive process to modify the hearing profile (Column 6, lines 39 – 43).

Regarding claims 192 and 196, Campbell teaches the playback device of claims 146 and 174, wherein the communication port comprises a port for wireless communication (Figure 1, element 105).

Claim 179 is rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell in view of Adams and in further view of Jigour (5815426).

Regarding claim 179, Campbell teaches the audio testing device of claim 174.

Campbell does not explicitly indicate a port adapted to couple a removable data storage device to the data processor, and resources for playing an audio data product stored in the removable data storage device.

Jigour teaches a mobile device that includes a removable data storage device for storing and playing audio product (Column 6, lines 30 – 39).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Jigour's teaching of a removable storage device in Campbell's device in order to allow the mobile device to store audio clips and be able to move them from device to device easily.

Response to Arguments

Applicant's arguments filed October 25, 2006 have been fully considered but they are not persuasive.

The applicant argues that the Adams reference does not teach the headset or the stereo speakers. The examiner disagrees, since all the reference Campbell lacks is the idea of a headset, which is basically earphones, with speakers for both ears. Adams teaches a disclose that includes coupling these headsets to cellular phones, which is the same device as Campbell. It is obvious to combine a headset for cellular phones to any cellphones, and Campbell teaches a cellphone. Also a headset is basically "stereo" itself since it uses two speakers for two ears.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Bates whose telephone number is (571) 272-3980. The examiner can normally be reached on 8 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on (571) 272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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December 29, 2006

Philip Tran

PRIMARY EXAMINER